

# **KISSINGER N. SIBANDA Esq., Attorney at Law**

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*Attorney for Plaintiff.*

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**UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF NEW YORK**

KISSINGER N. SIBANDA

*Plaintiff,*

V.

DAVID ELLISON, DAVID BENIOFF,  
BILLY RAY, DARREN LEMKE,  
SKYDANCE PRODUCTIONS, LLC, a  
California Limited Company; and GEMINI  
PICTURES, LLC, a California Limited  
Liability Company, ASHLEE LIN, FOSUN  
PICTURES INC.

### *Defendants.*

Case No: 1:23-CV-05752-JMF

**PLAINTIFF'S DECLARATION:**

RESPONSE TO DEFENDANTS' MOTIONS  
TO DISMISS  
(LIN and SKYDANCE Defendants).

1 Kissinger N. Sibanda Esq, an attorney duly admitted to practice in the District of  
2 Columbia, SDNY for this matter, and admitted to the United States Second Circuit, United States  
3 Supreme Court declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, that the  
4 following is true and correct:  
5

6 I am familiar with the facts stated in the complaint.

7 I submit this declaration in support of my response to against defendants' motions to dismiss  
8 this action.

9 I am familiar with Federal Procedure and the Rules of this Court, the Southern District of New  
10 York.

12 In addition, I hold a double Masters in Trial Advocacy for both State (Temple James  
13 Beasley School of Law), the number 1 ranked Program in Trial advocacy in the country, and  
14 Federal defense (California Western School of Law). I was the first in the United States to  
15 achieve this distinction of a double master's in trial advocacy from American Universities.

17 In 2011, I undertook the Federal Bar SDNY *Pro Bono* training.

18 I am competent and knowledgeable to appear in this matter.

19 Plaintiff attaches the following:

- 20 1. Exhibit: 1: Sibanda Deposition, at 87-88.  
21  
22 2. Exhibits: 2: Earlier work by plaintiff – “If God was a poet.” New Africa Press, South  
23 Africa. 1996.  
24  
25 3. Exhibits: 3. Earlier work by plaintiff – “The Songs of Soweto.” Africa World Press.  
26 2001.  
27  
28 4. Exhibit: 4: Email from Ashlee Lin dated December 23, 2020, stating in part:

**“I have also explained to you the frivolousness of your contention that Gemini Man infringes your book. I have read enough of the book to understand that.”**  
(Emphasis added.) *Id.*

5. Exhibit: 5: Email from Ashlee Lin dated November 30, 2020, stating in part:

“I assure you that we have evaluated the merits of your alleged infringement claim **based on objective legal analysis.**” *Id.* (Emphasis added.)
  6. Exhibit: 6: Copyright Registration for “The Return to Gibraltar.”
  7. Exhibit: 7: Copyright registration for “Gemini Man.”
  8. Exhibit: 8: News article, “From Dusty Qunu to Big Apple.”

Respectfully submitted,

Dated: 10/16/2023 LIVINGSTON, NJ

By: /s/Kissinger N. Sibanda

DR. KISSINGER N. SIBANDA ESQ  
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Plaintiff's Attorney